

REMARKS

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for the courtesies extended in the telephonic Examiner interviews of May 16, 2007 and June 14, 2007, and for carefully considering this application.

Examiner Interview Summary

On May 16, 2007 an interview was conducted with Examiner Myint, and was attended by Aly Dossa (L0031) and Justin Bronn. During the meeting, Examiner Myint agreed to contact a USPTO Expert on 37 C.F.R. § 1.131 declarations to determine the evidentiary sufficiency of the evidence previously submitted in 37 C.F.R. § 1.131 declaration filed on February 2, 2007. Examiner Myint agreed to contact Aly Dossa to discuss the results of his discussion with the USPTO Expert.

A subsequent telephone interview occurred between Aly Dossa and Examiner Myint on June 14, 2007. During this interview, Examiner Myint indicated that he had consulted with the USPTO expert and had determined that the previously submitted 37 C.F.R. §1.131 declaration was sufficient to antedate the prior art. At the close of the interview, Examiner Myint requested that the Applicant file the instant response and reiterate the arguments presented in the RCE filed on February 2, 2007. Upon receipt of this response, Examiner Myint agreed to enter the 37 C.F.R. §1.131 declaration filed on February 2, 2007, and withdraw U.S. Patent Application No. 2003/0217130 ("Tang") as prior art.

Declaration under 37 C.F.R. § 1.131

The purpose of a 37 CFR § 1.131 declaration is to overcome a prior art rejection by proving invention of the claimed subject matter by the applicant prior to the effective date of the reference relied upon in the rejection. See MPEP 715.01.

A declaration under 37 C.F.R. § 1.131 may be established using one of three alternatives shown outlined in MPEP § 715.07, III:

37 C.F.R. 1.131(b) provides three ways in which an applicant can establish prior invention of the claimed subject matter. The showing of facts must be sufficient to show:

(A) >(actual)< reduction to practice of the invention prior to the effective date of the reference; or

(B) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice; or

(C) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice).
(emphasis added)

In the instant case, Applicant is basing the declaration on the first alternative. Accordingly, the Applicant must only show actual reduction to practice prior to the effect date of the reference, *i.e.*, May 16, 2002. Further, as the Applicant is basing the declaration on the first alternative, a showing of diligence, including engineering-diligence and attorney-diligence, is not required. See MPEP § 715.07, III. A copy of the declaration was filed on February 2, 2007, for the referenced application, and is incorporated by reference in the instant response.

Disposition of Claims

Claims 1-10, 12-17, and 19-24 are pending in this application. Claims 1, 6, 12, 15, 19, 23, and 24 are independent. The remaining claims depend, either directly or indirectly, from claim 1, 6, 12, 15, or 19.

Rejections Under 35 U.S.C. § 103*Claims 1-4, 6, 10, 16-17, 21, and 22*

Claims 1-4, 6, 10, 16-17, 21, and 22 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Application No. 2003/0217130 ("Tang") in view of U.S. Patent Application No. 2003/0233380 ("Coss"). For the reasons set forth below, this rejection is respectfully traversed.

Tang is not valid prior art to this application as evidenced by the previously filed declaration under 37 C.F.R. § 1.131. As stated in the declaration, the present invention was reduced to practice prior to the effective date of Tang (*i.e.*, prior to May 16, 2002). In view of the above, Tang may not be used to support the aforementioned 35 U.S.C. § 103 rejection. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 5, 7-9, 12, 13, 15, 20, and 24

Claims 5, 7-9, 12, 13, 15, 20, and 24 are rejected under 35 U.S.C. § 103 as being obvious over Tang in view of Coss and further in view of U.S. Patent No. 6,578,131 ("Larson"). For the reasons set forth below, this rejection is respectfully traversed.

As discussed above, Tang may not be used to support the aforementioned 35 U.S.C. § 103 rejection. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 14, 19, and 23

Claims 14, 19, and 23 are rejected under 35 U.S.C. § 103 as being obvious over Tang in view of Coss and Larson, and further in view of U.S. Patent Application No. 2003/0159132 ("Barnett"). For the reasons set forth below, this rejection is respectfully traversed.

As discussed above, Tang may not be used to support the aforementioned 35 U.S.C. § 103 rejection. Accordingly, withdrawal of this rejection is respectfully requested.

Conclusion

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 03226/330001; SUN040156).

Dated: July 6, 2007

Respectfully submitted,

By /Robert P. Lord/
Robert P. Lord
Registration No.: 46,479
OSHA · LIANG LLP
1221 McKinney St., Suite 2800
Houston, Texas 77010
(713) 228-8600
(713) 228-8778 (Fax)
Attorney for Applicant